

PROPOSED AMENDMENT

SENATE AMENDMENTS TO S.B. 1266

(Reference to printed bill)

Strike everything after the enacting clause and insert:

“Section 1. Title 15, chapter 10, article 8, Arizona Revised Statutes, is amended by adding section 15-1225, to read:

15-1225. Postemployment benefits; trust accounts

A. IF THE GOVERNING BOARD OFFERS POSTEMPLOYMENT BENEFITS TO SCHOOL DISTRICT EMPLOYEES OR TO SPOUSES AND DEPENDENTS OF SCHOOL DISTRICT EMPLOYEES, OR BOTH, MONIES TO FUND THESE BENEFITS MAY BE DEPOSITED IN A POSTEMPLOYMENT BENEFITS FUND OR POSTEMPLOYMENT BENEFITS TRUST ACCOUNT, OR BOTH. ADDITIONAL MONIES SHALL NOT BE LEGISLATIVELY APPROPRIATED SPECIFICALLY TO PROVIDE ANY POSTEMPLOYMENT BENEFITS OFFERED BY A GOVERNING BOARD.

B. A POSTEMPLOYMENT BENEFITS FUND IS A CASH CONTROLLED FUND AS PROVIDED IN SECTION 15-905, SUBSECTION N. THE MONIES IN THE POSTEMPLOYMENT BENEFITS FUND ARE NOT SUBJECT TO REVERSION, EXCEPT THAT AT THE END OF FIVE YEARS OF NO ACTIVITY IN THE FUND, ANY REMAINING MONIES SHALL BE REVERTED TO THE MAINTENANCE AND OPERATIONS FUND.

C. A POSTEMPLOYMENT BENEFITS TRUST ACCOUNT ESTABLISHED PURSUANT TO SUBSECTION A OF THIS SECTION SHALL MEET ALL OF THE FOLLOWING CONDITIONS:

1. CONTRIBUTIONS MADE BY THE SCHOOL DISTRICT INTO THE TRUST ACCOUNT ARE IRREVOCABLE.

2. THE ASSETS OF THE TRUST ACCOUNT SHALL BE DEDICATED TO PROVIDING BENEFITS TO SCHOOL DISTRICT RETIREES AND THEIR BENEFICIARIES IN ACCORDANCE WITH THE TERMS OF THE OTHER POST EMPLOYMENT BENEFIT PLAN.

3. TRUST ASSETS SHALL BE LEGALLY PROTECTED FROM CREDITORS OF THE SCHOOL DISTRICT OR THE INVESTMENT MANAGER PURSUANT TO SECTION F OF THIS SECTION.

D. CURRENT OR PRIOR YEAR POSTEMPLOYMENT BENEFITS LIABILITIES MAY BE PAID FROM ANY SCHOOL DISTRICT FUND FROM WHICH A SCHOOL DISTRICT MAY PAY EMPLOYEE BENEFITS INTO THE POSTEMPLOYMENT BENEFITS FUND OR TRUST ACCOUNT. PAYMENTS FOR CURRENT OR PRIOR YEAR LIABILITIES PAID INTO THE POSTEMPLOYMENT

1 BENEFITS FUND OR TRUST ACCOUNT SHALL BE TREATED AS AN EXPENDITURE FROM THE  
2 ORIGINATING SCHOOL DISTRICT FUND.

3 E. THE FOLLOWING EXPENDITURES MAY BE MADE FROM A POSTEMPLOYMENT  
4 BENEFITS FUND OR A POSTEMPLOYMENT BENEFITS TRUST ACCOUNT:

5 1. ADMINISTRATIVE AND MANAGEMENT COSTS.

6 2. PAYMENT OF BENEFITS.

7 F. AN INVESTMENT MANAGER FOR A POSTEMPLOYMENT BENEFITS TRUST ACCOUNT  
8 ESTABLISHED PURSUANT TO SUBSECTION A OF THIS SECTION SHALL BE EITHER:

9 1. A QUALIFIED INVESTMENT MANAGER APPOINTED BY THE DISTRICT GOVERNING  
10 BOARD.

11 2. THE MANAGER OF A PUBLIC AGENCY POOL ESTABLISHED PURSUANT TO SECTION  
12 11-952.01.

13 G. THE INVESTMENT MANAGER FOR A POSTEMPLOYMENT BENEFITS TRUST ACCOUNT  
14 MAY INVEST AND REINVEST THE MONIES IN THE ACCOUNT AND MAY HOLD, PURCHASE,  
15 SELL, ASSIGN, TRANSFER AND DISPOSE OF ANY OF THE SECURITIES AND INVESTMENTS  
16 IN WHICH ANY OF THE TRUST ACCOUNT MONIES ARE INVESTED. THE INVESTMENT MANAGER  
17 SHALL INVEST THE MONIES IN THE TRUST ACCOUNT IN THE SAME MANNER AS THE MONIES  
18 IN PERMANENT STATE LAND TRUST PURSUANT TO SECTION 35-314.01, EXCEPT THAT NOT  
19 MORE THAN THIRTY PERCENT OF THE MONIES IN THE TRUST ACCOUNT MAY BE INVESTED  
20 IN EQUITY SECURITIES AT ANY TIME. THE PERCENTAGE OF INVESTMENT SHALL BE  
21 CALCULATED AT COST.

22 H. FOR THE PURPOSES OF THIS SECTION, POSTEMPLOYMENT BENEFITS DO NOT  
23 INCLUDE BENEFITS PROVIDED BY THE ARIZONA STATE RETIREMENT SYSTEM.

24 Sec. 2. Section 11-952.01, Arizona Revised Statutes, is amended to  
25 read:

26 11-952.01. Public agency pooling of property, fidelity,  
27 liability, workers' compensation, life, health,  
28 accident and disability coverage; exemptions;  
29 board of trustees; contract; termination; audit;  
30 insolvency; definition

31 A. In addition to other authority granted pursuant to this title, two  
32 or more public agencies may enter into contracts or agreements pursuant to

1       this article for the joint purchasing of insurance, including prepaid legal  
2       insurance or reinsurance, or to pool retention of their risks for property,  
3       fidelity and liability losses and to provide for the payment of such property  
4       loss, fidelity loss, prepaid legal insurance or claim of liability made  
5       against any member of the pool, including any elected or appointed official,  
6       officer or employee covered by the pool, on a cooperative or contract basis  
7       with one another or may jointly form a nonprofit corporation or enter into a  
8       trust agreement to carry out the provisions of this section in their behalf  
9       directly or by contract with a private party.

10       B. In addition to other authority granted pursuant to this title, two  
11       or more public agencies may enter into contracts or agreements pursuant to  
12       this article to establish a workers' compensation pool to provide for the  
13       payment of workers' compensation claims pursuant to title 23, chapter 6 on a  
14       cooperative or contract basis with one another or may jointly form a  
15       nonprofit corporation or enter into a trust agreement to carry out the  
16       provisions of this section in their behalf directly or by contract with a  
17       private party. A workers' compensation pool established pursuant to this  
18       subsection may provide coverage for workers' compensation, employers'  
19       liability and occupational disease claims. A workers' compensation pool is  
20       subject to approval as a self-insurer by the industrial commission pursuant  
21       to section 23-961, subsection A, paragraph 2 and is subject to title 23,  
22       chapter 6 and rules adopted pursuant to that chapter in addition to the  
23       requirements of this section. The industrial commission, by rule, resolution  
24       or order, may adopt requirements for the administration of a workers'  
25       compensation pool under this subsection, including separation or commingling  
26       of funds, accounting, auditing, reporting, actuarial standards and  
27       procedures.

28       C. In addition to other authority granted pursuant to this title, two  
29       or more public agencies may enter into contracts or agreements for the joint  
30       purchase of life insurance, disability insurance, accident insurance or  
31       health benefits plan insurance or may pool retention of their risks of loss  
32       for life, disability, health or accident claims made against any public

1 agency member of the pool or to jointly provide the health and medical  
2 services authorized in section 36-2907. Public agencies may establish pools  
3 for the purposes of this subsection by any of the following methods:

- 4 1. On a cooperative or contract basis.
- 5 2. By the formation of a nonprofit corporation.
- 6 3. By contracts or intergovernmental agreements with the Arizona  
7 health care cost containment system administration.
- 8 4. By the execution of a trust agreement directly by the agencies or  
9 by contracting with a third party.

10 D. In addition to other authority granted pursuant to this title, two  
11 or more public agencies may enter into contracts or agreements pursuant to  
12 this article for the joint purchasing of insurance for property, liability or  
13 workers' compensation losses or to pool retention of their risks for property  
14 and liability loss to cover the public agency, its elected officials and  
15 employees and the contractor and subcontractor of every tier engaged in the  
16 performance of a construction project for the public agency. Public agencies  
17 may establish pools for the purpose of this subsection by any of the  
18 following methods:

- 19 1. On a cooperative or contract basis.
- 20 2. By the formation of a nonprofit corporation.
- 21 3. By the execution of a trust agreement directly by the agencies or  
22 by contracting with a third party.

23 E. Section 10-11301 does not apply to nonprofit corporations formed  
24 pursuant to this section.

25 F. Title 41, chapter 23 does not apply to the procurement of insurance  
26 or reinsurance, or to the procurement of the services provided for in  
27 subsection K, paragraph 8 of this section, by any pool established pursuant  
28 to this section.

29 G. Title 43 does not apply to any pool established pursuant to this  
30 section. Any pool established pursuant to this section is exempt from  
31 taxation under title 43.

1           H. Each pool shall be operated by a board of trustees consisting of at  
2           least three persons who are elected officials or employees of public entities  
3           within this state. The board of trustees shall notify the director of the  
4           department of insurance of the existence of the pool and shall file with the  
5           director and with the attorney general a copy of the intergovernmental  
6           agreement or contract. The attorney general shall file a copy of the  
7           agreement or contract with the secretary of state as required by section  
8           11-952. The board of trustees of each group shall do all of the following:

9           1. Establish terms and conditions of coverage within the pool  
10          including exclusions of coverage.

11          2. Ensure that all claims are paid promptly.

12          3. Take all necessary precautions to safeguard the assets of the  
13          group.

14          4. Maintain minutes of its meetings.

15          5. Designate an administrator to carry out the policies established by  
16          the board of trustees and to provide day-to-day management of the group and  
17          delineate in the written minutes of its meetings the areas of authority it  
18          delegates to the administrator.

19          6. If the pool is a workers' compensation pool, file a copy of the  
20          agreement with the director of the industrial commission.

21          I. If the pool includes private, nonprofit educational institutions,  
22          each private, nonprofit educational institution shall post a bond, cash  
23          deposit or other comparable financial security in an amount that is equal to  
24          at least one and one-half times the amount of the private, nonprofit  
25          educational institution's annual premium to ensure payment of the school's or  
26          institution's legal liabilities and other obligations if the pool is  
27          determined to be insolvent or is otherwise found to be unable to discharge  
28          the pool's legal liabilities and other obligations pursuant to subsection N  
29          of this section.

30          J. The board of trustees shall not:

31          1. Extend credit to individual members for payment of a premium,  
32          except pursuant to payment plans established by the board.

1           2. Borrow any monies from the group or in the name of the group except  
2 in the ordinary course of business.

3           K. In addition to the requirements of section 11-952, a contract or  
4 agreement made pursuant to this section shall contain the following:

5           1. A provision for a system or program of loss control.

6           2. A provision for termination of membership including either:

7           (a) Cancellation of individual members of the pool by the pool.

8           (b) Election by an individual member of the pool to terminate its  
9 participation.

10          3. A provision requiring the pool to pay all claims for which each  
11 member incurs liability during each member's period of membership.

12          4. A provision stating that each member is not relieved of its  
13 liability incurred during the member's period of membership except through  
14 the payment of losses by the pool or by the member.

15          5. A provision for the maintenance of claim reserves equal to known  
16 incurred losses and an estimate of incurred but not reported claims.

17          6. A provision for a final accounting and settlement of the  
18 obligations of or refunds to a terminating member to occur when all incurred  
19 claims are concluded, settled or paid.

20          7. A provision that the pool may establish offices where necessary in  
21 this state and employ necessary staff to carry out the purposes of the pool.

22          8. A provision that the pool may retain legal counsel, actuaries,  
23 auditors, engineers, private consultants and advisors.

24          9. A provision that the pool may make and alter bylaws and rules  
25 pertaining to the exercise of its purpose and powers.

26          10. A provision that the pool may purchase, lease or rent real and  
27 personal property it deems necessary.

28          11. A provision that the pool may enter into financial services  
29 agreements with banks and other financial institutions, that it may issue  
30 checks in its own name and that it may invest its monies in equity  
31 securities, mutual funds and investment funds registered with the United

1 States securities and exchange commission, debt obligations and any eligible  
2 investment permitted by section 35-323.

3 L. A pool or a terminating member shall provide at least ninety days'  
4 written notice of the termination or cancellation. A workers' compensation  
5 pool shall notify the industrial commission of the termination or  
6 cancellation of a member thirty days before the termination or cancellation  
7 of the member.

8 M. The pool shall be audited annually at the expense of the pool by a  
9 certified public accountant, with a copy of the report submitted to the  
10 governing body or chief executive officer of each member of the pool and to  
11 the director of the department of insurance. The board of trustees of the  
12 pool shall obtain an appropriate actuarial evaluation of the claim reserves  
13 of the pool including an estimate of the incurred but not reported  
14 claims. The department of insurance shall examine each public agency pool  
15 once every five years. The director of the department of insurance may  
16 examine a public agency pool sooner than five years from the preceding  
17 examination if the director has reason to believe that the pool is  
18 insolvent. The costs of any examination shall be paid by the pool subject to  
19 the examination.

20 N. If, as a result of the annual audit or an examination by the  
21 director of the department of insurance, it appears that the assets of the  
22 pool are insufficient to enable the pool to discharge its legal liabilities  
23 and other obligations, the director of the department of insurance shall  
24 notify the administrator and the board of trustees of the pool of the  
25 deficiency and the director's list of recommendations to abate the  
26 deficiency, including a recommendation not to add any new members until the  
27 deficiency is abated. If the pool fails to comply with the recommendations  
28 within sixty days after the date of the notice, the director shall notify the  
29 chief executive officer or the governing bodies, if any, of the members of  
30 the pool, the governor, the president of the senate and the speaker of the  
31 house of representatives that the pool has failed to comply with the  
32 recommendations of the director.

1           O. If a pool is determined to be insolvent or is otherwise found to be  
2           unable to discharge its legal liabilities and other obligations, each  
3           agreement or contract shall provide that the members of the pool shall be  
4           assessed on a pro rata basis as calculated by the amount of each member's  
5           annual contribution in order to satisfy the amount of deficiency. The  
6           assessment shall not exceed the amount of each member's annual contribution  
7           to the pool.

8           P. A pool established pursuant to this section may make available  
9           programs providing for insurance coverages described in subsections A, B and  
10          C of this section to those charter schools governed by section 15-183,  
11          subsection M and, except for a workers' compensation pool, to private,  
12          nonprofit educational institutions.

13          Q. In addition to the authority set forth in this title, a pool  
14          established pursuant to this section may invest public monies on behalf of  
15          pool members, but any such investments shall be limited to those permitted by  
16          section 35-323, **EXCEPT AS PROVIDED IN SECTION 15-1225, SUBSECTION G.** A pool  
17          established pursuant to this section may not invest monies that are required  
18          by law to be deposited with a county treasurer.

19          R. A pool established pursuant to this section, by the adoption of a  
20          resolution of continuing effect, may authorize and request the state  
21          treasurer to invest funds for the pool pursuant to section 35-326.

22          S. For the purposes of this section, "health benefits plan" means a  
23          hospital or medical service corporation policy or certificate, a health care  
24          services corporation contract, a multiple employer welfare arrangement or any  
25          other arrangement under which health and medical benefits and services are  
26          provided to two or more persons."

27 Amend title to conform

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